IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 97 of 2005

Glaxosmithkline Pharmaceuticals Ltd. .. Petitioner

versus

Samir Shah .. Respondent

...

Mr.P.K. Rele, Sr.Counsel a/w Rajesh Rele, Vinod Tayde i/b Piyush Shah for the petitioner.

Mr.Jaiprakash Sawant for the respondent.

CORAM : D.G. KARNIK, J

DATED : 19th June 2006.

ORAL JUDGEMENT:-

1. By this petition, the petitioner challenges the awards Part-I dated 18th January 2003 and award Part-II dated 28th September 2004 passed by the Labour Court, Mumbai in Reference IDA no.581 of 2000.

2. The facts giving rise to this Writ Petition

are summarised below :-

. The petitioner is a pharmaceutical company. The respondent was employed by the petitioner company as a medical representative. On 17th September 1998, the petitioner served on the respondent charge-sheet alleging two principal charges. It was firstly alleged that respondent was absent from duty without leave or intimation from 19th June 1998 to 19th July 1998 and also from 4th August 1998 till the date of the charge-sheet. Secondly, it was alleged that the respondent had falsely reported in his daily report dated 23rd July 1998 that he had visited Datta Medical Stores, authorised wholesale dealer without actual visit and had also shown that he had called on Dr.S.G. Nigudkar without visiting him. In pursuance of the charge-sheet, an enquiry was held in which the respondent was found guilty. The petitioner accepted the enquiry report and terminated services of the respondent. Government to make a reference. At respondent’s request the Government referred the dispute regarding the termination of service of the respondent for adjudication of the labour court. The labour court held that the enquiry was vitiated on account of the non following of the principles of

natural justice. It further held that the findings recorded by the enquiry officer were perverse. By part-I of the award dated 18th January 2003 the Labour Court held that enquiry was vitiated and permitted the petitioner to adduce evidence to justify the order of termination by adducing the evidence before the labour court. Thereafter, the petitioner chose to adduce the evidence before the labour court and the respondent also examined his evidence. After considering the evidence adduced by the parties the labour court came to the conclusion that the petitioner had failed to prove that the respondent was guilty of misconduct of either of the two charges mentioned above. The labour court accordingly ordered the respondent be reinstated in service with continuity of services and backwages with effect from the date of termination i.e. from 6th August 1999. This part-II of the award was pronounced on 28th September 2004. The award Part-I dated 18.1.2003 and award part-II dated 28.9.2004 are impugned in this petition.

3. Mr.Rele, learned senior counsel appearing on behalf of the petitioner did not advance any arguments challenging the correctness of Part-I of the award. In the circumstances, it is not necessary to consider

the challenge to Part-I of the award formally raised in the petition.

4. As regards part-II of the award, Mr.Rele submitted that the petitioner had adduced sufficient evidence to show that the daily call report submitted by the petitioner about his visits to to Dr.S. Nigudkar and the wholesaler dealer Datta Medical Stores on 23rd July 1998 was false. The petitioner had neither visited Dr.S. Nigudkar nor Datta Medical Stores on 23rd July 1998 but had falsely shown the visits to them in his daily report dated 23rd July 1998. The petitioner had examined Dr.Sanjay Nigudkar as well as Mr.Anil Patkar and Mr.Anand Patkar of Datta Medical Stores to show that the respondent had not visited them on 23rd July 1998. Their evidence was cogent and trustworthy. The decision of the labour court was contrary to the evidence on record and was palpably wrong. He further submitted that there was not dispute that the respondent was absent from duty from 4th August 1998 upto the date of the charge-sheet. Though the respondent had applied for the leave on medical grounds, the leave was rejected and he was called upon to submit a medical certificate which he had failed to do. The petitioner had proved

that the respondent was unauthorisedly absent from 19th June 1998 to 19th July 1998 and from 4th August 1998 till 17th September 1998. Therefore, the labour court ought to have held that the respondent was absent unauthorisedly and was guilty of misconduct. The decision of the Labour Court that the respondent had not committed any misconduct is thus palpably wrong.

5. It is settled principle of law that in writ jurisdiction, the High Court is not entitled to re-appreciate like a Court of appeal, the evidence adduced before the Court or Tribunal. Findings of fact recorded by a Court or Tribunal on appreciation of the evidence cannot normally be set aside in exercise of a writ jurisdiction unless they are perverse. A finding of fact would be perverse if it is based on no evidence or the Court or Tribunal has omitted to consider the admissible evidence or has taken into consideration inadmissible evidence or the finding is such that no Court or Tribunal acting reasonably would have reached that finding. It is not shown nor even argued that the decision of the Labour Court was without any evidence or that admissible evidence was omitted or inadmissible evidence was

considered. It would therefore be necessary to only examine whether the decision of the labour court that the petitioner had not proved the misconduct on the part of the respondent, is such as no court, acting reasonably, would have so decided.

6. As regards the first charge of unauthorised absence the petitioner had examined Mr.Ninad B. Lolap, Area Business Manager. In his affidavit in lieu of examination in chief, Mr.Lolap has stated as follows :

> "If any medical representative (M.R.) wants to go on leave he has to take prior sanction of his leave by intimation(or) subsequently to submit the leave application by post or courier services. I received the leave application from second party to which he applied for the period 16th June to 18th June, 1998 along with his D.C.R (Daily Call Report) dated 15th June 1998"

From this statement, it is clear that leave can be sanctioned before it is availed or can be sanctioned post facto. Mr.Lolap has further stated that the respondent was unauthorisedly absent from 19th June 1998 to 20th July 1998 and from 17th August 1998 till the date of the charge-sheet. In the cross-examination, he admitted that he did not re-collect whether the respondent had submitted a medical certificate dated 4th August 1998. He also admitted that he did not recollect whether the respondent had submitted another medical certificate dated 28th September 1998. The Labour Court has referred to this part of the cross-examination n para no.11 of its judgement and has drawn the inference that the respondent was sick and had submitted the medical certificate along with his leave application. The finding reached by the labour court that the respondent was sick and had submitted leave application with medical certificate is a possible finding of fact which cannot in any way be said to be perverse.

7. The second charge consists of two parts. It is alleged that the petitioner had shown two false visits in his daily call report of 23rd July 1998. Firstly, the petitioner had shown among others he had visited

Dr.S. Nigudkar on 23rd July 1998. Secondly, he had also shown that he had visited a wholesaler Datta Medical Stores both on 23rd July 1998. According to the petitioner, the respondent had not made either of the calls on 23rd July 1998 and had falsely reported having made them. Firstly, it may be noted that in the charge-sheet dated 17th September 1998, the petitioner had only made vague allegations that the respondent had shown false visits to a doctor and an authorised wholesaler in his daily report dated 23rd July 1998. without mentioning the name of the doctor or the wholesaler though the petitioner was aware that the false report related to visits to Dr.S.Nigudkar and wholesaler Datta Medical Stores. Secondly, the evidence adduced in proof of the allegations is not satisfactory.

8. To prove the allegation of false report of visit to Datta Medical Stores, petitioner examined Anil Patkar. In his cross examination, Anil admitted that he had a shop by name Datta Medical Corporation in the neighbourhood of Datta Medical Stores. In no way he was shown to be connected with Datta Medical Stores. Therefore, the evidence of Anil Patkar is of no assistance to the petitioner. The petitioner then

examined Anand N. Patkar, a partner of Datta Medical Stores. However, in his cross-examination, Anand admitted that he was a partner of Datta Medical Stores only since the year 2003. On 28th July 1998, Anand was not a partner of Datta Medical Stores and could not have deposed about the visit/call by the petitioner to Datta Medical Stores on 23rd July 1998. There was thus no evidence before the labour court to show that the respondent's daily call report of visit to Datta Medical Stores on 23rd July 1998 was false.

9. Mr.Rele, learned senior counsel, however strongly relied upon the evidence of Dr.S.G. Nigudkar. In his affidavit in lieu of examination-in-chief, Dr.Nigudkar has stated that he did not meet the respondent from June 1998 onwards. Therefore, by implication it can be said that on 23rd July 1998, the respondent had not visited or called on him. Mr.Rele submitted that there is no reason for a doctor to tell a lie and the labour court erred in not relying upon his evidence and thereby the judgement is not only erroneous but palpably wrong leading to perversity. Mr.Rele also invited my attention to the letter dated 17th August 1998 given by Dr.Nigudkar to the petitioner in which he has stated that its medical representative

had not met him or called on him atleast in the past two to three months. In the cross-examination, Dr.Nigudkar has admitted that the letter dated 17th August 1998 was obtained by Mr.Ninad Lolap. It was thus not a voluntary letter given by Dr.Nigudkar but was given on the saying of Mr.Ninad Lolap, Area Business Manager of the petitioner company and on his request. Secondly, in his cross examination, Dr.Nigudkar has admitted that he was not maintaining any record of the samples or gifts received from the petitioner. He has also admitted that he was not maintaining any record of the visits of the medical representatives to his clinic. It is true that no motive has been attributed to Dr.Nigudkar for giving of a false letter and making of a false statement that any medical representative (which included the respondent) of the petitioner had not visited him for two months. However, in the absence of any record maintained by him, Dr.Nigudkar could be mistaken in remembering the exact period during which the medical representative had not met him. He has stated on 17th August 1998 that no medical representative of the petitioner had met him for two months prior to that date. The previous visit according to the respondent was on 23rd July 1998 i.e. about four weeks prior to 17th August

1998. The respondent had not visited Dr.Nigudkar nearly for a month prior to 17th August 1998. Dr.Nigudkar, in the absence of any record, might be mistaken in thinking that no medical representative had visited him for a period of two months. Even when the counsel is asked how many days ago he last argued a case before me he was unable to reply precisely. This is a normal human memory. In the circumstances, it cannot be said merely on the basis of the evidence of Dr.S.G.Nigudkar, uncorroborated by any records that the respondent had not visited him on 23rd July 1998. In any event, the finding that the respondent might have visited Dr.Nigudkar on 23rd July 1998 is a possible finding and cannot be said to be in any way perverse.

10. Thus, the petitioner has been unable to show that the findings recorded by the labour court are so erroneous as to render them perverse. In my view, the findings recorded by the labour court are possible findings of fact which cannot be interfered in exercise of writ jurisdiction.

11. For these reasons, Writ Petition is dismissed. Rule is discharged without any order as to costs.

(D.G. KARNIK, J)